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No. 6, Original

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES IN REPLY TO CALIFORNIA'S BRIEF IN RELATION TO REPORT OF SPECIAL MASTER OF MAY 22, 1951

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Since California's Brief in Relation to the Special Master's Report largely deals with matters with which the Court need not concern itself at this stage of the proceedings, we have but few comments to make on it.

I

Procedure

The State devotes 13 pages of its brief (pp. 13–25) to the contention that the Court is presented with a nonjusticiable problem, and 70 pages (pp. 25–95) to a detailed argument, on the merits, that California's criteria for determining the boundary between the federal and state areas should be adopted by the Court. Only

the last 2½ pages (pp. 95–97) of the brief are concerned with the problem which is now before the Court:—*i. e.*, what issues should be heard and determined at this time and to what tribunal should these issues be presented. Without argument or elaboration, the last point in the State's brief summarily requests "a trial or hearings in California for the presentation of evidence in this case, whether it be before a three-judge court, a commission, a special master, or some other form of tribunal" (p. 97). Presumably—though the State does not explicitly say so—the "trial" or "hearings" would cover all of the "evidence" and materials which California has cited to the Special Master and which, we are convinced, are largely irrelevant.

We need not repeat the reasons why we believe that such a hearing is unnecessary and wasteful, and will result in further delay in this already long-drawn-out proceeding, and why we urge that the Court itself should now hear and determine the three legal issues set forth in our Motion for Hearing, filed August 1, 1951. See Brief in Support of Motion, pp. 11–51.[1] All we need point out here is that the best refutation of California's

[1] In our Brief in Support of Motion (p. 42, fn. 27) it was stated, on advice from the Secretary of the Interior, that the City of Long Beach plans to proceed with the drilling of more than 100 new oil wells in Long Beach Harbor and that these wells, even if all of them should be bottomed landward of the boundary line claimed by the United States in this segment, would seriously increase the drainage of oil from that portion of the Long Beach pool situated seaward of that line. This matter was mentioned as one of the considerations

subdued claim in the last few pages of its brief, that a full "trial" is necessary for the proper presentation of its case, is the preceding 70-page section of the brief (pp. 25–95) which deals with the merits of the controversy in great detail and undeniably contains an adequate presentation of the State's claims and contentions on the basic issue of the choice of criteria for determining the boundary. The contents of this 70-page section of California's brief are wholly irrelevant to the procedural problem now before the Court, except that they do serve clearly to demonstrate the feasibility and propriety of a hearing by the Court on these underlying issues, on briefs and oral argument. All the information which the Court would require can be supplied in this manner.

II

Justiciability

The State's argument on justiciability (California's brief, pp. 13–25), has already been answered (United States' Brief in Support of Motion, pp. 14–20). We desire, however, to stress

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creating a critical need for an early determination of the boundary in this area. The Department of the Interior and the Department of Justice have since been informed that the 100-well program constitutes a long-range plan projected over several years and that the immediate plans of the City contemplate a considerably smaller number of wells, none of which is to be bottomed less than 400 feet from the boundary claimed by the United States. However, the Department of the Interior remains of the opinion that the problem of drainage, both present and threatened, is of such importance as to make it imperative that the status of the waters in this area be determined at the earliest possible time.

once again that—contrary to the State's repeated assertion—it is the Federal Government's contention that the general criteria it proposes for the determination of the boundary between federal and state areas [2] have already been adopted by the United States in its dealings with foreign nations and currently represent the position of the executive branch with respect to the delimitation of a nation's marginal belt and the exterior boundaries of its inland waters. See United States' Memorandum in Regard to the Report of the Special Master, pp. 2–3; United States' Brief in Support of Motion, pp. 16–17. In connection with the argument on the merits, we propose to present a statement from the Department of State setting forth the past and present position of the United States on these matters *vis a vis* other countries.

Apart from the effect of the positions held and expressed by the executive, and aside from the other considerations mentioned in our brief, the State's claim of nonjusticiability is also sufficiently answered by the pendency of the *Anglo-Norwegian Fisheries Case* before the International Court of Justice. See United States' Brief, pp. 25–27. The United Kingdom there contends for criteria similar to those the United States advances in this proceeding, and Norway's position is comparable to that of California. The International Court—which is purely a judicial body—presumably will apply the rules of inter-

[2] *I. e.*, the general criteria proposed by the United States as solutions to Questions 1 and 2, as stated by the Special Master.

national law to sustain the claim either of the United Kingdom or of Norway. This Court should have no greater difficulty in passing judicially on the similar problem presented here.

III

The Merits

Since the Court is not now concerned with the merits of the United States' case, we shall not attempt at this time to answer California's long and detailed argument on the merits. That answer will be supplied in due course. It may be helpful, however, to note that while the State repeatedly emphasizes what it takes to be the national interest in pushing our exterior boundaries as far out to sea as possible, it wholly neglects the other side of the coin, *i. e.,* that we would be forced to recognize, even where detrimental to to the national interest, comparable extensions of their boundaries by all the other nations of the world. The criteria for delimiting the country's territorial and inland waters necessarily work both ways, and the United States has always recognized this significant factor in taking its position on these subjects.

Respectfully submitted,

J. HOWARD MCGRATH,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

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